

Distinguished Members of the ICC Bar Association,

I am very grateful for your interest in the selection procedure for the next ICC Prosecutor and for having the opportunity to express my views on matters pertaining to the role of the Defence in the Court. I will be answering to the best of my knowledge and in full fairness.

My late father and my late father-in-law were both defence counsels. I was raised to the principle of fairness both in the relations with clients as well as other parties and the Judges. In my current position (Chief District Prosecutor in Palermo), I entertain excellent relationships with the Bar Association of Palermo. We are frequently in contact and we have adopted a number of protocols and agreements, particularly with respect to organisational aspects of my Office and daily relations between Defence Counsels and Prosecutors or staff members of my Office.

Answering to your questionnaire would require a thorough knowledge of the OTP's daily activity, which I would be able to achieve only being in function. I will therefore only state which principles would guide my activity, if I will be elected Prosecutor. I confide in your understanding.

SET OF QUESTIONS UNDER POINT A)

The equality of arms and the presumption of innocence are fundamental principles of international criminal investigations and trials and lie at the core of all international instruments. They imply both the prosecutorial duty to research and disclose timely exculpatory evidences as well as the provision of necessary resources to allow effective defence. The latter must be seen in the context of the ICC budget provided by State parties.

I am not able to respond on the question of Counsel's salaries of which I do not have any knowledge at this stage. I imagine current arrangements take into account that OTP lawyers work full time in the Court and cannot engage in other occupations, while – as far as I understand – Defence Counsels can undertake other professional engagements.

I would be in favour, in principle, to the participation of defence and victims' representatives in the Court Coordination Council, particularly as far as organisational aspects are concerned.

SET OF QUESTIONS UNDER POINT B)

I believe the code of conduct of Prosecutors (and OTP staff) require improvements; fairness and transparency must be guaranteed at the highest possible standards, with the right balance with the confidentiality of investigation.

I would be open and glad to discuss the matter of offences against the administration of justice and hear in details what your views are on this. I would like to note that investigators and prosecutors at the ICC are duty bound to impartiality and independence and the existing instruments, as clearly shown by the Trial Chamber decision recalled in the questionnaire, can guarantee the effectiveness of the said principles.

However, my intention would be to deal personally with any case of alleged breach of the rule committed by OTP lawyers, informing in due time about its outcome all the interested persons.

SET OF QUESTIONS UNDER POINT C)

I consider communications between the OTP and the defence Counsels and victims' representatives particularly important. At the same time, the confidentiality of investigation, as set out in the statutory framework must be considered and preserved. I doubt of the usefulness of contacts during preliminary examinations with the victims of the situation. At that stage the scope of a prospective case is undetermined and as a matter of experience only a limited number of incidents within the situation will be included in a possible case. A broader range of contacts would be possible during the investigations, particularly to understand which could be the position of the suspected person(s) and possibly agree on some investigative steps, also considering the defence views.

As to "provisional release", I'm fully convinced that the presumption of innocence is a rule of civilization before being a legal rule. I do not anyway see, at this stage, a need for a specific "policy" in this respect, because each case is different from the others and, in the case of more suspects, each position must be evaluated on its own. At the same time, it needs to be considered that in this matter the OTP is only required to give an opinion and it is to Judges to decide, according to the conditions set forth in art. 58(1)(b) of the Statute.

I have already said my opinion on research and disclosure of exculpatory evidences. Therefore, my answer to question 11 is clearly "yes".

While taking into account the many circumstances that may condition the duration of investigations and trials, I would definitely commit myself to streamline proceedings. I have done so in my current job. In a massive investigation in my Office against dozens of defendants for Mafia crimes, the first instance decision was adopted by the Chamber less than two years after the arrests.

SET OF QUESTIONS UNDER POINT D)

These questions raise a number of issues that need to be examined case-by-case. Any improvement in the current policies that can facilitate and speed up the protection of victims and their rights would be more than welcome. I have a long experience in victims and witness protection, since the Italian legal system is particularly well designed. I confide I could contribute heavily to the ICC system in this matter.

SET OF QUESTIONS UNDER POINT E)

Full independence of the Prosecutor must be preserved at all times. Practice in the selection and prioritisation of cases can be substantially improved. He/she must be able to combine managerial skills, leadership, communication skills, team building capability, and so on. I think to have proved the possession of such skills during my career, as shown is my CV and in positive evaluations always received by the competent national and international organs.

Obviously, the Prosecutor cannot do everything alone. He must be assisted and work together with his colleagues and staff, from the highest to the lowest position. Choices and decisions have to be always shared in the competent seats, giving to the Prosecutor a leading role and a power of impulse. This, in my opinion (and my experience so shows), can increase the credibility of the Office, the pride to be part of it and of cooperating with it, also stimulating such cooperation with a better outreach in the situation countries.

Contacts with all the actors involved in the OTP activity are crucial; so, I fully agree in establishing a mechanism of periodic meetings with the ICCBA, together with specific *ad hoc* meetings when the need arises.

Usually, the benchmark of success of a Prosecutor's Office is considered to be the number of convictions obtained in Court proceedings. This is for sure an element to be considered. But what I consider most important for the ICC Prosecutor is the possibility to identify, try and get punishment for the most responsible of the unacceptable crimes still committed in many parts of the world; and that is, in substance, the scope (also from a deterrent point of view) of the Rome Statute and of the ICC itself.

I thank you very much for your attention.

Francesco Lo Voi
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